



LEGISLATION, REGULATIONS & STANDARDS

FDA Provides Update on Added Sugar Labeling for Honey and Maple Syrup

U.S. Food and Drug Administration (FDA) Commissioner Scott Gottlieb issued a [statement](#) providing an update on how mandated added-sugar labeling will affect honey and maple syrup. “We recognized that this new labeling information on ‘packaged as such’ products may inadvertently lead consumers to think their pure products, such as a jar of honey or maple syrup, may actually contain added table sugar or corn syrup because there are ‘added sugars’ listed on the label,” Gottlieb notes. FDA previously proposed the use of an additional disclosure for honey and maple syrup products, but “the more than 3,000 comments we received on the draft guidance indicate that there are further opportunities to update our proposed approach,” according to the press release.

Gottlieb indicated that final guidance will be released in 2019. “This guidance will provide a path forward for pure, single-ingredient ‘packaged as such’ products that does not involve the standard ‘added sugars’ declaration on the Nutrition Facts label. We are not considering changes to the required percent daily value for these products, including for products like pure honey and maple syrup. We believe that such a solution strikes the balance of addressing producer concerns that their products could be perceived as being economically adulterated while still informing consumers on how these products contribute to their daily added sugar intake.”

FDA, USDA Announce Joint Meeting on

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Animal Cell Cultures

The U.S. Department of Agriculture (USDA) and Food and Drug Administration (FDA) have announced a joint public meeting to discuss “the use of cell culture technology to develop products derived from livestock and poultry.” The meeting, which will be held October 23-24, 2018, will focus on “the potential hazards, oversight considerations, and labeling” of the product category.

Following a conference hosted by the Good Food Institute, cell-based meat brand representatives reportedly agreed to “abandon[] the term ‘clean meat’ in favor of cell-based meat.” “We discussed the pros and cons of the term ‘clean meat,’ and decided to shift our label to ‘cell-based meat,’” a conference attendee reportedly told *Food Navigator*. “Traditional meat companies can be our biggest ally if they want to work with us. We can help them transition from industrial animal agriculture to cell-based meat. Cell-based meat is a better label to bring them on board.”

England May Ban Energy Drink Sales to Minors

England’s Department of Health and Social Care has opened a consultation on whether the country should ban the sale of energy drinks to children. The consultation requests comments on (i) “what products should be included in any restrictions,” (ii) “what age limit a ban should apply to,” (iii) “whether sales of energy drinks from vending machines should be restricted” and (iv) “whether there are any changes that would be more appropriate than a ban on sales to children or that could be applied as well as a ban.” The consultation cites the effects of sugar and caffeine on children as concerns triggering the proposed ban. Scotland, Wales and Northern Ireland would not be affected by any actions England takes pursuant to the consultation.

California Legislature Changes Default Beverage in Kids’ Meals

The California legislature has passed a bill that would require retail food facilities to make the default beverages sold with children’s meals “water, sparkling water or flavored water, as specified, or unflavored milk or a nondairy milk alternative, as specified.” Flavored waters may not contain “added natural or artificial sweeteners,” while nondairy milk alternatives must



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ABOUT SHOOK

Shook, Hardy & Bacon is widely recognized as a premier litigation firm in the United States and abroad. For more than a century, the firm has defended clients in some of the most substantial national and international product liability and mass tort litigations.

Shook attorneys are experienced at assisting food industry clients develop early assessment procedures that allow for quick evaluation of potential liability and the most appropriate response in the event of suspected product contamination or an alleged food-borne safety outbreak. The firm also counsels food producers on labeling audits and other compliance issues, ranging from recalls to facility

contain fewer than 130 calories. In addition, a restaurant's menu and advertisements must display the default beverages.

The bill would "not prohibit a restaurant's ability to sell, or a customer's ability to purchase, an alternative beverage instead of the default beverage offered with the children's meal, if requested by the purchaser of the children's meal." The bill has been presented to Governor Jerry Brown for approval.

inspections, subject to FDA, USDA and FTC regulation.



USDA Announces Dietary Guidelines Committee, Codex Meeting

The U.S. Department of Agriculture (USDA) has announced the intention to establish a 2020 Dietary Guidelines Advisory Committee and has solicited nominations for membership. The committee will consist of 13 to 20 members and will begin meeting in late 2018 or early 2019.



The U.S. Codex Office will hold a public meeting on September 26, 2018, to receive public comments on U.S. positions for the Codex Committee on Food Import and Export Inspection and Certification Systems.

LITIGATION

Kind Snacks Contain Undisclosed Processed Ingredients, Lawsuit Alleges

A consumer has filed a putative class action alleging that Kind LLC misleadingly markets its products as made from whole fresh fruits. *Song v. Kind LLC*, No. 18-4982 (E.D.N.Y., filed September 4, 2018). The complaint asserts that the product names and descriptions "use collective names to refer to their components" because they are allegedly made from processed fruit, "by-products or processed derivative ingredients." The plaintiff also argues that the visual representations on the packaging "emphasize their equivalence to whole fruits."

The complaint further asserts that tropical fruits used in the products are dried using osmotic dehydration, which purportedly treats the fruits with added sugars. In addition, the plaintiff alleges that Kind uses ascorbic acid as a preservative but does not list it among the ingredients. Claiming violations of New York's General Business Law, negligent misrepresentation and unjust enrichment, the plaintiff seeks class certification, injunctive relief, damages and attorney's fees.

Plaintiff Alleges AriZona Beverages Misrepresents Sugar and Calorie Content

AriZona Beverages LLC faces a putative class action alleging it misleads consumers by representing the sugar and calorie content of its beverages based on a serving size of eight ounces while its product is sold in 16-ounce cans. *Neville v. AriZona Beverages USA LLC*, No. 18-5040 (E.D.N.Y., filed September 6, 2018). The complaint asserts that AriZona “engaged in unfair competition to the detriment of consumers by refusing to follow the industry standard which is based upon the size of a can or bottle that a consumer would usually drink in one sitting.” Alleging violations of several state consumer-protection statutes and breach of express warranty, the plaintiff seeks class certification, damages, injunctive or declaratory relief, restitution and attorney’s fees.

SCIENTIFIC / TECHNICAL ITEMS

EFSA Explores Risks of Cricket Consumption

The European Food Safety Authority (EFSA) has released [a report](#) on risks associated with consuming crickets. The report finds that crickets contain high microbial loads because the entire insect —“including their guts”—is eaten, but food-borne bacteria infections are rare, though they may occur during processing. Crickets can also be host to mycotoxin-producing fungi that cannot be controlled with heat processing, the researchers report. Heavy metal accumulation and allergenicity were determined to be medium hazards, while viral or parasitic infections were considered low-risk.

MEDIA COVERAGE

FSA Finds One-Fifth of Meat Samples Contain Unspecified DNA

The U.K. Food Standards Agency (FSA) has [reportedly](#) found that one-fifth of meat samples tested contained DNA not attributable to the animal source indicated on the label. FSA conducted 665 tests from 487 businesses suspected of “compliance issues,”

including restaurants and supermarkets, and purportedly found that some samples contained DNA from as many as four animals. The products included mincemeat, sausages, kebabs and curries. An FSA spokesperson reportedly told *BBC* that the results were “not representative of the wider food industry.”

Professors Argue That “Mylk” Label Might Clear Up Confusion

In a forthcoming *Brooklyn Law Review* article, professors from George Washington University Law School and Lund University argue that one solution to the definition dispute between cow’s milk and plant-based milk producers may be to label plant-based milks as “mylk.” Gambert et al., “Got Mylk? The Disruptive Possibilities of Plant Milk,” *Brooklyn L. Rev.*, forthcoming 2019. The professors assert that plant-based milk producers should embrace a new word, such as the “whimsical” and “creative” “mylk,” to avoid negative associations with “milk with an ‘i,’” including “exploitation and oppression – of women, people of color, and nonhuman animals.”

“At the end of the day, the ‘milk wars’ on both sides of the Atlantic serve as a barometer of plant milk’s role as a disruptive force in the millennia-long relationship between humans and milk. By replacing the ‘i’ with a ‘y,’ plant milk – or mylk – advocates can signal to the world that they are not only aware of plant milk’s disruptive force both legally and culturally, but are explicitly celebrating the possibilities plant mylk has in leaving behind a tradition of exploitation and oppression in place of a kinder, more ethical way of interacting with the world.”

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